



# STATE OF INDIANA

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October 13, 2009

Gregg Montgomery  
Community News Editor  
*The Indianapolis Star*  
P.O. Box 145  
307 N. Pennsylvania St.  
Indianapolis, IN 46206-0145

*Re: Informal Inquiry 09-INF-29; Westfield Grand Junction Task Group*

Dear Mr. Montgomery:

This is in response to your informal inquiry dated August 3, 2009. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry regarding the Westfield Grand Junction Task Group ("Task Group"). My opinion is based on applicable provisions of the Indiana Open Door Law ("ODL"), I.C. § 5-14-1.5-1 *et seq.*

## BACKGROUND

Your inquiry seeks an informal opinion regarding whether or not the Task Group is subject to the ODL. According to the information in your inquiry, the Task Group is charged with the redevelopment of an area called Grand Junction in downtown Westfield, Indiana. Westfield Town Council President Andy Cook appointed the Task Group in fall of 2007. In 2008, Westfield became a city and Mr. Cook became the mayor. The Task Group advises Mayor Cook and other elected and appointed officials on development of the Grand Junction Plan, which the City Council approved in April of 2009. Since its formation, the Task Group has received at least \$211,000 from the Town of Westfield, the City of Westfield, and the Downtown Westfield Neighborhood Association.

This inquiry stems from your allegation that the Task Group changed its regular meeting time from every Friday at 9:00 a.m. to every other Friday at 7:30 a.m. without any public notice. You believe that the Task Group is a "committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated," which would make it a "governing body" under the ODL. I.C. § 5-14-1.5-2(b)(3). You also contend that the Task Group is itself a "public agency" as defined by the ODL, which is "[a]ny board, commission, department, agency,

authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.” I.C. § 5-14-1.5-2(a)(1).

My office forwarded a copy of your inquiry to the Task Group for response. Attorney Brian J. Zaiger’s response on behalf of the Task Group is enclosed for your reference. Mr. Zaiger states that the Task Group was formed by the request of Mayor Cook when he was serving as Town Council president. Various individuals and groups were involved in soliciting support for the redevelopment of the older areas of downtown Westfield, but none of the efforts were well organized. As a result, then-Council President Cook requested that the efforts be organized. Thereafter, according to Mr. Zaiger, “[o]ne person was requested to form a group and given the charge of attempting that goal. No other ‘appointments’ were made in that regard.”

Mr. Zaiger further responds by saying that no funding was given to the Task Group and no town official formally participated in its activities. It has been comprised of more than a dozen individuals in a fluid membership and its meetings, agenda, goals, conduct and all other activities have been managed by the Task Group itself without any involvement of the Town or City. However, municipal facilities have been used to conduct some of its meetings.

#### ANALYSIS

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. Ind. Code 5-14-1.5-1. All meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. IC 5-14-1.5-3(a).

The initial question is whether the committee constitutes a public agency, the governing body of which would be subject to the meeting requirements of the ODL. The ODL defines a “public agency” as, among other things, “[a]ny advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency....” I.C. §5-14-1.5-2(a)(5). Any entity that is “subject to . . . audit by the state board of accounts that is required by statute, rule, or regulation” would likewise be a “public agency” under the ODL. I.C. §5-14-1.5-2(a)(3)(B). The plaintiff in a lawsuit under the Open Door Law has the burden of proving that the defendant entity is a “public agency” within the meaning of the statute. *Perry County Dev. Corp. v. Kempf*, 712 N.E.2d 1020 (Ind. Ct. App. 1999).

Here, it appears that the Task Group was not created by any statute, ordinance, or executive order. Moreover, the State Board of Accounts has informed me that it is not subject to audit by that agency. If these facts change in the future, the Task Group might be considered a public agency at that time. However, based on the information before me, it is my opinion that the Task Group is not a public agency for purposes of the ODL.

The second question is whether or not the Task Group constitutes a “governing body” of some other public agency. If it is, it would be subject to the ODL, which defines a “governing body” as “any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.” I.C. § 5-14-1.5-2(b)(3). Your inquiry asserts that then Westfield Town Council President Cook appointed the Task Group. If that is true, the Task Group would indeed be subject to the ODL because it is a committee that was directly appointed by the presiding officer of a governing body.

However, the Task Group states in its response that it was formed by an (unnamed) individual designated by then-Council President Cook. In that case, the Task Group was not “appointed directly by the governing body or its presiding officer.” The Indiana Court of Appeals addressed such a situation in *Robinson v. Indiana University*, 638 N.E.2d. 435 (Ind. Ct. App. 1994). *Robinson* was decided after the General Assembly amended the definition of “governing body” to add the word “directly” after “any committee appointed.” In *Robinson*, the Indiana University’s Board of Trustees (a governing body for ODL purposes) delegated the authority to appoint a committee and subcommittee to the university president who, in turn, passed the duty on to an associate vice president for research. *Id.* at 437. The court held that “the Committee and Subcommittee did not derive their authority *directly* from the governing body” because the board delegated its appointment authority to the university administration. *Id.* at 438. Consequently, the committee and subcommittee were not governing bodies under the ODL. *Id.* at 437-38.

Moreover, an example in the Public Access Counselor’s *Handbook on Indiana’s Public Access Laws* also distinguishes between committees appointed by the presiding officer of a governing body and appointments made by individuals outside of the governing body:

**Example 3:** A curriculum committee, appointed by a school superintendent, who is to report its findings to the school board, is not subject to the ODL because the superintendent is not the presiding officer of the school board. The same committee appointed by the school board president, however, would be subject to the ODL. I.C. § 5-14-1.5-2(b).

*Handbook on Indiana’s Public Access Laws* at 7. Thus, if Mr. Cook delegated the formation of the committee to someone else and that person appointed the members of the Task Group, the Task Group is not subject to the ODL because it was not “appointed directly by the governing body or its presiding officer.” I.C. § 5-14-1.5-2(b)(3).

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Task Group was appointed by Mr. Cook in his capacity as the president of the Westfield Town Council, the Task Group is subject to the ODL. If, however, the Task Group was appointed by an

individual to whom the Westfield Town Council or its presiding officer delegated that responsibility, it is not subject to the ODL.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack  
Public Access Counselor

Cc: Brian J. Zaiger, Krieg DeVault  
Honorable Andy Cook, Mayor, City of Westfield  
Jim Anderson, Westfield Grand Junction Task Group